Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	
Amendment of the Commission's Space Station Licensing Rules and Policies	IB Docket No. 02-34
2000 Biennial Regulatory Review – Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations	IB Docket No. 00-248

COMMENTS OF INTELSAT LLC

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Intelsat LLC ("Intelsat"), by its attorneys, is pleased to submit these comments[1] in response to the above-captioned Notice of Proposed Rulemaking ("*Notice*"), in which the Federal Communications Commission ("FCC" or "Commission") seeks to expedite its satellite licensing process.[2]

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[1] Intelsat also joins the comments filed by the Satellite Industry Association ("SIA"). As explained in these comments, Intelsat agrees with SIA that the Commission's proposal to revise the current processing round licensing approach is preferable to the particular first-come, first-served ("FCFS") proposal described in the *Notice*. However, Intelsat further believes that the adoption of the "Modified FCFS" licensing methodology proposed in these comments would better serve the FCC's objectives than either of the options set forth in the *Notice*.

[2] *See Amendment of the Commission's Space Station Licensing Rules and Policies; 2000 Biennial Regulatory Review – Streamlining and Other Provisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, FCC 02-45, 17 FCC Rcd 3847 (2002) (Notice of Proposed Rulemaking and First Report and Order) ("*Notice*").

I. INTRODUCTION AND SUMMARY

This rulemaking was prompted by the recognition that U.S. licensing of orbital locations and spectrum for satellite communications services now "can take several years."[3] Intelsat shares the Commission's concern that such licensing delay imposes economic costs on society, risks non-compliance with ITU procedures, and allows scarce spectrum to lie fallow.[4] Intelsat also agrees that the existing satellite licensing process—once appropriate—may no longer be best "suited to the technologically advanced, new satellite services of today."[5] Thus, Intelsat welcomes the Commission's dedication "to improving its procedures" and appreciates the opportunity both to comment on the reform proposals set forth in the *Notice* and to offer additional streamlining measures.[6]

The *Notice* sets forth two options for revising the current satellite licensing procedure—first-come, first-served ("FCFS") or reform of the existing processing round procedure ("processing reform"). In selecting between these two streamlining approaches, Intelsat counsels the Commission to strive to balance the benefits of expedited service to the public and the dangers of unjust enrichment and speculation. Intelsat believes that the FCFS approach as set forth in the *Notice* is fatally flawed in its failure to deter adequately the filing of purely speculative applications. Furthermore, although current processing round policies can be reformed and streamlined, the FCC's proposed reforms still could result in considerable regulatory delay absent additional modifications and clear time frames for applicant and FCC action. Thus, while reformation of the processing round policies would be preferable to the

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3 *Notice,* ¶ 11.

4 *Id.*

5 *Id.*

6 *Id.*

agency's FCFS option, Intelsat proposes herein a "Modified FCFS" approach, which, if adopted in its entirety, would be preferable to either of the streamlining options as described in the *Notice*.

Specifically, Intelsat recommends adoption of a "Modified FCFS" licensing procedure that: (i) establishes a queue and processes applications in the order received; (ii) covers only new licenses with established service rules and frequency allocations (*e.g.*, geostationary satellite orbit ("GEO") fixed satellite service ("FSS") in C, Ku and Ka); (iii) is not employed where sharing is based on band segmentation (*e.g.*, mobile satellite services ("MSS")); (iv) requires evidence of a $10 million bond at the time of filing an application; (v) permits "second-in-line" applicants to shift to otherwise available orbital locations; (vi) results in license grant or denial for the first applicant within 90 days; and (vii) permits applicants or license holders to transfer their applications or authorizations to other qualified applicants, but only at cost (mirroring the current policy in the Broadcast arena). If the Commission adopts this "Modified FCFS" procedure, it should also continue to enforce strenuously its milestone policy.

Implementation of these recommendations *as a whole* will serve the public interest by inserting greater speed and certainty into the agency's satellite licensing processing. However, implementation of FCFS without the safeguards that Intelsat proposes could impair satellite licensing—the result might be a surge in filings by unqualified applicants and/or speculators. This would not serve the public interest in ensuring continued investment in satellite infrastructure and the availability of satellite capacity. Thus, Intelsat favors its "Modified FCFS" only if adopted and applied as a package.

Eliminating procedural delays in initial satellite licensing would be a desirable reform. But, beyond that, the current process unintentionally introduces regulatory roadblocks even after

a spacecraft is launched and operating. No streamlining proposal would be complete without addressing those procedural obstacles. Intelsat thus also proposes an additional post-launch streamlining measure—a "deemed granted" or "grant stamp" procedure for approving satellite license modification applications. This procedure would be similar to that suggested by the FCC for replacement satellites, which Intelsat fully supports.

Intelsat's proposed "Modified FCFS" procedure and "deemed granted" approval for modification and replacement applications will reduce the strain on FCC resources—in part by weeding out speculative applications—that comes from selecting among mutually exclusive applications and preparing written orders for routine system changes. Adoption of these measures would also ensure that regulatory review does not impose an artificial impediment to legitimate satellite operators meeting International Telecommunication Union ("ITU") bring into use deadlines and the needs of consumers. In addition, the streamlined licensing supported by Intelsat will also further the FCC's efforts to allow the market, not regulation, to determine the successful provision of communications services to the public.[7] Most importantly, Intelsat's proposal for "Modified FCFS" licensing should result in increased innovation and funding of new satellite services and thus promote new and faster initiation of service to the American public.

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[7] *See, e.g., Review of Commission Consideration of Applications under the Cable Landing License Act*, 16 FCC Rcd 22167 (Int'l Bur. 2001) (Report and Order) ("*Cable Landing License Streamlining Order*"); *1998 Biennial Regulatory Review – Review of International Common Carrier Regulations*, 14 FCC Rcd 4909 (Int'l Bur. 1999) (Report and Order) ("*Section 214 Streamlining Order*").

II. INTELSAT SUPPORTS THE FCC'S DECISION TO REDUCE EXISTING LICENSING DELAY FOR ORBITAL LOCATIONS AND SPECTRUM

Intelsat concurs with the *Notice's* recognition that the current processing round system has resulted in long delays in the licensing of new satellite systems.[8] For example, issuance of licenses in the second processing round for low earth orbit ("Little LEO") systems took five years,[9] the processing round for "Big LEO" systems lasted four years,[10] and even though the FCC awarded licenses in the first Ka-band processing round in three years, milestone obligations were not imposed for an additional three years.[11] More recently, the second Ka-band GSO processing round lasted for four years and ultimately concluded with the FCC implementing its own plan for allocating orbital locations.[12] Finally, applications filed in December 1997 for second round Ka-band NGSO satellite licenses are still pending.[13]

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8 *Notice*, ¶ 11.

9 *See, e.g., Final Analysis Communications Services, Inc.*, 13 FCC Rcd 6618, 6619-20 (Int'l Bur. 1998) (Order and Authorization).

10 *See, e.g., Boeing Co.*, 16 FCC Rcd 13691 (Int'l Bur. 2001) (Order and Authorization).

11 *See, e.g., GE American Communications, Inc., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service,* 12 FCC Rcd 6475 (Int'l Bur. 1997); *GE American Communications, Inc., Application for Authority to Construct, Launch and Operate a Ka-band Satellite System in the Fixed-Satellite Service*, DA 01-225, 16 FCC Rcd 2461 (Int'l Bur. 2001) (Order and Authorization).

12 *Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band*, DA 01-1693, 16 FCC Rcd 14389 (Aug. 3, 2001) (Order).

13 *Satellite Policy Branch Information, Satellite Applications Accepted for Filing in the 18.8-19.3/28.6-29.1 and 19.7-20.2/29.5-30 GHz Bands; Cut-off Established for Additional Applications in the 18.8-19.3 and 28.6-29.1 GHz Bands,* Report No. SPB-105, DA 97-2201 (Oct. 15, 1997) (Public Notice) and *Satellite Applications Accepted for Filing in the Ka-band; Cut-off Established for Additional Applications in the 28.35-28.6 GHz, 29.1-30 GHz, 17.7-18.8 GHz, and 19.3-20.2 GHz Frequency Bands*, Report No. SPB-106, DA 97-2202 (Oct. 15, 1997) (Public Notice) (setting a "cut-off" date of December 1997 for Ka-band applications); *Satellite Policy Branch Information, Ka-Band Applications Accepted for Filing*, Report No. SAT-00012 (Mar. 16, 1999) (Public Notice).

In the *Notice,* the FCC recognizes that these licensing delays have imposed economic and administrative costs on consumers, satellite providers and the Commission. Indeed, the *Notice* estimates that the cost of a two-year delay in licensing is approximately $1.5 million per $1 million in expected annual benefits for a system that would come into service five years after licensing.[14] Intelsat also agrees that good spectrum policy demands completion of licensing as soon as possible in order to expedite the use of spectrum resources by licensees or the reassignment of spectrum returned to or reclaimed by the Commission. Recent revisions in ITU procedures further highlight the need for a faster licensing procedure. For all these reasons, the FCC's initiative to streamline the licensing process will serve the public interest in ensuring a reliable and long-lasting supply of satellite services.

III. A "MODIFIED" FIRST-COME, FIRST-SERVED PROCESS WILL BEST SERVE THE FCC'S POLICY GOAL OF EXPEDITING SERVICE TO THE PUBLIC

The FCC's goal of expediting the process for licensing orbital locations and satellite spectrum, and thus service to consumers, may be best achieved by replacing the current processing round approach for certain bands and services with a "Modified FCFS" approach. In contrast, the FCFS approach set forth in the *Notice* could actually slow and prolong satellite licensing (and therefore potentially delay service to the public). This is because the FCC's proposal is insufficient to deter filing by speculative and unqualified applicants interested either in blocking legitimate applicants or selling their place in line. Any streamlining reform must be crafted to reduce—as much as feasible—the potential to misuse procedural rules to serve private, not public, interests.

Moreover, the processing round reform proposed by the Commission may not adequately address the elements that have caused past delays in application processing, unless modified to

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14 *Notice*, ¶ 14 n.13.

include well-defined time frames for applicant settlement and FCC action. For example, the Commission's revised processing round proposal shortens, but does not eliminate, spectrum- and orbital-sharing negotiations among applicants,[15] fails to address fully the delays associated with processing multiple applications with multiple frequency requirements and, ultimately, lists only vague, conflicting—and, in some cases, anticompetitive—criteria for selecting among qualified applicants.[16] Nevertheless, as between the two streamlining options set forth in the *Notice*, Intelsat would prefer the Commission's proposed processing round reform. Overall, however, Intelsat believes that modification of the FCFS proposal to include anti-speculation safeguards might best achieve the Commission's public interest objectives.

Intelsat's Modified FCFS proposal shares some basic components of the FCFS approach set forth in the *Notice*. The Commission would accept and process a lead application for an orbital location or spectrum and include subsequently filed mutually exclusive applications in a queue according to filing date and time. The FCC would accept comments on the lead application, dismiss it if grant would not serve the public interest, and then process the next

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[15] *Notice,* ¶¶ 67-83. While the Commission's alternative proposal, a mandatory-sharing mechanism, would eliminate those negotiations, mandatory sharing may not be appropriate for all bands.

[16] For example, the proposal to favor "new entrants" contradicts the proposal to give a "preference to applications who have made more progress toward providing service." *Notice,* ¶¶ 71 &3. Both of these criteria are also subjective. Notably, the determination of whether an applicant qualifies as a "new entrant" will require the adoption of an affiliation standard and close scrutiny of corporate relationships. Similarly, the Commission's inquiry into and comparison of various applicants' stage of development of their proposed satellite systems would add complexity and time to the Commission's licensing deliberation. Moreover, the FCC's proposal to disfavor applicants that previously missed a milestone would unfairly penalize an applicant for a business decision unrelated to the current application. *Id.*, ¶ 72. Similar to the proposed "new entrant" criterion, the Commission would also have to evaluate whether the milestone failure of one company should be attributed to an applicant with related ownership. Finally, the Commission's proposal to favor applicants committed to serving "rural or unserved" areas makes no sense when applied to geostationary FSS satellites, which by their very nature can serve rural and unserved areas of the continental United States. *Id.*, ¶ 74. To the extent that the Commission intended to require the deployment of systems capable of serving Alaska and Hawaii, it would be inconsistent with FCC policy and also, in many cases, technically infeasible.

application in the queue.[17] However, Intelsat's Modified FCFS proposal adds the following measures designed to strike the appropriate balance between processing speed and regulatory predictability:

- Applies only to new licenses for orbital locations and spectrum with established service rules and frequency allocations (*e.g.*, C, Ku and Ka) but not to services where band-segmentation is a preferable sharing method (*e.g.*, MSS);
- Requires applicants to provide evidence of a $10 million bond with each application;
- Requires applicants to file electronically;
- Requires license grants (or denials) within 90 days of an application;
- Permits second-in-line applicants some options ("partial fungibility") in their selection of orbital locations;
- Allows transferability at cost of licenses and pending applications; and
- Strenuously enforces milestone obligations.

These additional elements will result in an FCFS licensing procedure that offers licensing certainty, prompt issuance of licenses and expeditious delivery of service to the public. If FCFS licensing is adopted without any of these elements, the filing of blocking or speculative applications likely would outweigh the benefits of speed and certainty. As a whole, however, Intelsat believes that Modified FCFS will serve the FCC's goals better than the revised processing round approach proposed in the *Notice* because it directly addresses those elements of processing rounds that are responsible for delays. In particular, this Modified FCFS approach eliminates the two most significant sources of delay in processing rounds—negotiations between applicants on the sharing of spectrum and orbital locations and, when those fail, FCC assignment of particular applicants to particular slots.[18] It also eliminates the time period between the filing

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17 *Notice,* ¶ 33.

18 *Notice,* ¶ 10.

of a lead application and the cut-off date for competing applications, during which time no application is processed under the current processing round system. Therefore, Modified FCFS will enable the FCC to process applications more quickly, minimize the Commission's administrative costs,[19] and thus speed service to the American public.

A. Modified FCFS Should Be Limited to New Licenses in "Established" Services and Bands Not Shared Via Band Segmentation

Intelsat recommends that the Commission apply Modified FCFS licensing only for "new" licenses in "established" services and bands not shared via band-segmentation. For this purpose, a service and band would be "established" if the FCC has already both adopted service rules and made a frequency allocation. As the Commission adopts new frequency allocations and service rules, the number of services and bands that are "established" and thus eligible for the Modified FCFS approach would increase. Adoption of "generic" or "default" service rules would, of course, also increase the class of applications eligible for Modified FCFS.[20] A "new" license would be defined to exclude an application for a replacement satellite or modification application, which are not currently subject to processing rounds and thus do not experience the delays associated with new space station applications. Applying this standard today, the Modified FCFS approach would be available for applications in the geosynchronous earth orbit fixed-satellite service ("GEO FSS") in the C, Ku and Ka bands.

However, Modified FCFS should not apply where the agency already divides spectrum resources based on "band segmentation," rather than orbital location. For example, Modified FCFS should not apply to new licenses for mobile satellite services ("MSS") and possibly non-

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19 *Id.*, ¶¶ 40-41.

20 The Commission's recently adopted service rules (*e.g.*, 2 GHz and NGSO Ku-band) share many features in common with earlier adopted service rules (*e.g.*, "Big LEO") and thus the

geostationary satellite orbit ("NGSO") satellites. In these situations, Modified FCFS may not significantly expedite licensing because spectrum-sharing negotiations, which constitute the most significant source of processing round delay, either are absent or brief.

By limiting Modified FCFS to "established" services and bands, the Commission will achieve its goal of expediting licensing and still facilitating innovation.[21] Were the FCC to apply Modified FCFS to new bands, it might place the entire burden of championing a new service allocation and service rules on the first applicant. This could unintentionally undermine any streamlining benefits and slow development of new satellite services and bands, hampering provision of new and innovative services to the public. In addition, implementing Modified FCFS only for bands with a frequency allocation and service rules will obviate the need to file a conforming application or to modify an application to accommodate multiple satellite systems.

B. The Commission Should Require Applicants to Execute a $10 Million Bond

The FCC should be extremely cautious about any streamlining that increases incentives to file blocking or speculative applications. Under the current process, and even with the FCC's proposed FCFS, some applicants may be more interested in slowing other service providers than actually investing in satellite infrastructure. Moreover, the FCC should be careful to avoid creating opportunities for unscrupulous entities to profit from process or to "greenmail" legitimate operators into "buying out" applicants that never seriously contemplated providing service to the public.

(Continued . . .)
Commission could consider forming a list of "generic" service rules that would apply to all new satellite services.

21 *Notice*, ¶ 1.

That the FCC's proposed FCFS process includes insufficient pecuniary protections against such abuse of its rules. Plainly, current application fees alone are too low to deter entities from filing blocking or speculative applications. Therefore, in addition to the standard Section 8 Application Processing Fees (currently $93,375.00 for a single geostationary orbit satellite), Intelsat proposes that the FCC require each applicant for a new space station to submit, with its application, evidence that it has executed a bond in the amount of $10 million that will come into effect upon license grant.[22] The Commission should also impose a license condition that requires payment of the bond to the U.S. Treasury upon license revocation (for example for failure to satisfy milestones) provided that, at the time the license is revoked, the licensee has not incurred ten percent of the costs of building and launching its licensed satellite.[23] If the licensee has spent such amount, however, the bond would expire.[24]

This $10 million amount would be sufficient to discourage speculative applications, but should not pose a hurdle to legitimate applicants including new entrants. This is because the

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[22] Based on Intelsat's experience, the form of the bond proposed here should not pose an unduly complicated obstacle for qualified applicants.

[23] The Commission has the authority to impose license conditions; however, an applicant may reject the license as conditioned within 30 days. 47 C.F.R. §1.110; *Central Television, Inc. v. F.C.C.*, 834 F.2d 186, 190 (D.C. Cir. 1987). As a matter of public policy, conditioning the license in this way will deter frivolous and speculative applications and no FCFS should be adopted absent such protections. There may remain a question, however, as to whether such license condition is consistent with the Commission's statutory authority. Intelsat urges the FCC to resolve any such questions before adopting FCFS. *Cf.* 47 U.S.C. § 154(i) (authorizing the FCC to "perform any and all acts, ... and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions").

Because some satellite operators are affiliated with satellite manufacturers, however, the Commission should continue its requirement that affiliated companies negotiate contracts at arms' length and may also need to inquire as to whether the expenditure towards satellite construction and launch was bona fide. Additionally, in the case of affiliated manufacturers and licensees, the FCC should require any efforts by manufacturers in mitigation—by, for example, re-selling the under-construction satellite—to post date the missed milestone.

bond will only be paid to the U.S. Treasury if a licensee does not make a good faith effort to proceed with the construction of its satellite, which is clearly evidenced by its failure to expend even 10% of the costs of building and launching that satellite (which would be $22.5 million for a geostationary orbit satellite).[25] This $10 million amount is also sufficiently large to deter bad faith filings that the Commission need not prohibit applicants that miss a milestone from pursuing another license. Furthermore, because Intelsat proposes that Modified FCFS licensing only apply to "established" services, the $10 million bond will not apply to, and thus not deter the filing of, applications that require unavoidable, but time-consuming, adoption of service rules or frequency allocations.

C. Intelsat Supports Electronic Filing, Priority Based on Filing Date and Time, and No "Filing Windows"

Intelsat supports the FCC's proposals to mandate electronic filing of applications and to establish priority on the date and time of filing[26] and agrees that the FCC should dismiss a first-in-time application if its filing fee is paid by a personal check that does not clear.[27] Intelsat also agrees that the FCC should only take action on the second application if it could not grant the first application. Thus, the Commission would not consider the merits of the second filed application or compare the public interest benefits of the first and second application.[28]

(Continued . . .)

24 Intelsat believes that this approach is different than, and preferable to, imposing a forfeiture for failure to meet a milestone because it is designed to deter bad faith filings not penalize legitimate entities with good faith intentions.

25 *Notice*, ¶ 112 n.148.

26 *Notice*, ¶ 118.

27 *Id.*, ¶ 94.

28 Intelsat believes that resolution of conflicts between mutually exclusive applications by date and time of filing is appropriate and consistent with *Ashbacker*. *Id.*, ¶ 63.

In addition, Intelsat supports the Commission's tentative conclusion not to establish a "filing window" if it adopts this proposed Modified FCFS approach.[29] Intelsat notes that the FCC currently "does not determine when to make an orbital location and associated frequency band available for licensing."[30] Rather the Commission "allow[s] the private sector to take the initiative in determining whether, and when, to file an application and for which satellite uses to apply."[31] There is nothing inherent to FCFS licensing that would require the FCC to deviate from its existing policy of allowing applicants' business determinations to dictate when applications are filed. Indeed, the ability to file an application at any time will add certainty and predictability to the Commission's licensing process. Moreover, if an applicant files for an orbital location or spectrum that is not currently available (because its business cost-benefit analysis supports getting in the queue for a license that can not yet be granted), the FCC could start a queue and process the first application only when a license can be granted. Thus, the filing of an application that cannot be granted immediately will not burden the Commission's limited resources. The Commission's acceptance of applications at any time (even if a slot is not currently available for licensing) also avoids the likelihood that multiple applications will be filed within a millisecond of being designated "available" by the Commission. Furthermore, to the extent that, absent a filing window, the Commission is concerned that a licensee on the verge of losing its license could gain an unfair filing advantage vis-à-vis other interested parties, the Commission could prohibit a licensee from reapplying for a lost license for a period of 30 days.

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29 *Id.*, ¶ 43.

30 *Id.*

31 *Id.*

In contrast, adoption of a "filing window" would not facilitate service to consumers. A likely consequence of establishing a "filing window" is that all interested parties will submit applications the first day of the filing window rather than filing the application on the basis of their own business needs and risk assessment. This results in unnecessary licensing delay as all interested applicants postpone filing their applications until the window opens. Furthermore, the likely result would be multiple simultaneous applications that overload the FCC's electronic filing system. A "filing window" will also greatly increase the risk of simultaneously filed and thus mutually exclusive applications.

D. Under Modified FCFS, The FCC Should Act On Applications Generally Within 90 Days

Intelsat also recommends that the Commission act on the first application received for an available orbital location or spectrum within 90 days. To meet this timeframe, Intelsat recommends that the Commission place the first-filed application for an available license on Public Notice within 10 days of filing[32] and provide the required thirty days for petitions to deny,[33] followed by ten days for oppositions and five days for replies.[34] The Commission would then have approximately 30 days to grant or deny the application or notify the applicant that additional time to review is needed. If, however, the orbital location or spectrum applied for is

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32 The FCC has already committed to place applications on Public Notice within ten days of filing and should continue this approach under Modified FCFS licensing. *See International Bureau to Streamline Satellite and Earth Station Processing*, Report No. SPB-140 (Oct. 28, 1998) (Public Notice). Intelsat recognizes that the ten day time frame might be difficult to meet if a filing fee is paid by personal check. Federal regulations require banks to make checks for more than $5,000 to be available for withdrawal no later than the seventh business day following the deposit date for local checks, and the eleventh business day following the deposit date for non-local checks. 12 C.F.R. §§ 229.12, 229.13. However, there should be no difficulty providing Public Notice within ten days if an applicant submits its filing fee by wire transfer, certified check or money order. Certified checks and money orders are guaranteed by the issuing financial institution. Uniform Commercial Code, § 3-409; 12 U.S.C. §4001(6).

33 47 U.S.C. § 309(d)(1).

34 47 C.F.R. § 25.154.

not currently available for licensing, the FCC could start an application queue and place the first application on public notice within 10 days after the orbital location or spectrum applied for becomes available. Similarly, the FCC could keep the second-in-time filed application in a queue and place it on public notice within 10 days of denying the first application or revoking the license granted to the first applicant.

Time Period	Action
Day 1	Application Eligible for FCFS Filed
Day 10	FCC Public Notice of Application
Days 11-41	Petitions to Deny or Comments
Days 42-51	Oppositions or Responses
Days 52-57	Replies
Days 57-90	FCC Review of Applications
Day 90	Grant or Denial

Congress and the FCC have established time periods for processing other types of applications with great success.[35] In this case, a 90-day period will provide sufficient time for the Commission to review applications if it excludes not yet established services and bands from FCFS licensing (thus obviating the need for frequency allocation or service rules proceedings), eliminates financial qualification requirements, and streamlines its technical information requirements (discussed in Section V below).

E. The FCC Should Adopt Partial Fungibility of Orbital Locations

Intelsat agrees with the FCC that a first-come, first-served approach necessarily requires the elimination of the current policy that many orbital slots are "fungible" and that the FCC may

[35] For example, the Commission currently uses time periods for the processing of Section 214 applications (14 days for streamlined; 90 days for non-streamlined); streamlined processing of cable landing license applications (60 days); petitions for a declaratory ruling to exceed the 25% benchmark under Section 310(b) (45 days streamlined; 60 days non-streamlined) and mergers (180 days). Congress has mandated a 90-day time period for the processing of Section 271 applications.

lawfully grant a licensee a slot different from that requested.[36] However, fungibility would continue to serve the public interest in specific, narrowly defined circumstances. Thus, the Commission should preserve a policy of "partial fungibility" to expedite further satellite licensing and to promote the availability of satellite services to the public.

Specifically, Intelsat proposes that the Commission provide any applicant that is second-in-line for an orbital location a one-time choice of remaining second at its applied-for slot or becoming first-in-line for any other slot that remains (or becomes) vacant while the FCC processes the first-in-line application for the contested orbital location. Similarly, if multiple applications are filed for two or more slots and one or more slots remain vacant, the Commission could offer the second-in-line applicant at each slot with multiple applications the option of being licensed in the vacant slot(s). Should more than one second-in-line applicant seek to become first-in-line for the vacant slot, the Commission could offer the vacant slot to the second-in-line applicant with the application filed first-in-time or require the applicants to enter into a sharing arrangement. If, however, multiple licensing/sharing is chosen, the Commission should first give each applicant the opportunity to return to its second-in-line status as its filed for orbital location rather than participate in the sharing arrangement for the vacant slot.

Allowing applicants the choice of shifting their second-in-line application to an alternate available orbital location will serve the public interest by increasing the speed with which available slots are assigned to interested entities. It also adds the possibility that an applicant seeking an orbital location will obtain one even if his application is filed subsequent to another

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[36] *Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service*, 84 F.C.C.2d 584, 601 (1981) (Memorandum Opinion and Order) ("[A]n applicant's request for a particular orbital location is not dispositive of what location will actually be assigned.").

entity. Furthermore, licensing orbital locations more quickly starts a milestone clock and thus promotes rapid and efficient use of spectrum. Finally, the flexibility afforded an applicant in selecting slots will enable it to fulfill its business plan more rapidly and thus better serve American consumers.

F. The FCC Should Allow Cost-Based Transfers of Licenses And Pending Applications

The Commission proposes to eliminate its "anti-trafficking" policy and thus allow applications or licenses to be transferred freely. Although Intelsat agrees with the Commission that the ability to sell a license quickly would provide many public interest benefits, it also believes that some additional measures may be necessary to deter the filing of speculative applications. As the *Notice* recognizes, a FCFS process with full license transferability raises speculation concerns.[37] For example, the inherent value of acquiring a "first-in-line" application could prompt applications by entities interested in acquiring and selling that now valuable right without any real intent to launch and operate a satellite, and thus waste time (and frequency/orbital resources) until the license ultimately is revoked for failure to meet milestones. Given that the initial milestone review occurs one year after licensing, combining first-come, first-served with unlimited transferability could waste approximately 18 months and actually retard the provision of satellite services to the public.

Intelsat recognizes that the need to expedite the licensing process and service to the public and the public interest benefits associated with prompt licensing outweigh the agency's unjust enrichment concerns, *if* adequate safeguards are present to prevent speculation. Thus, Intelsat recommends that the FCC allow applicants and licensees to transfer their pending

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37 *Notice,* ¶ 117.

applications (*i.e.*, their place in a queue)[38] and "bare" licenses (*i.e.*, a license without a constructed or partially constructed spacecraft), provided the transfer is based on cost. Such "costs" could cover fees associated with obtaining the license, including application fees and legal fees, as well as a licensee's expenditures thus far for system development. If the transfer of an application or license is cost-based, the Commission need not be concerned that entities will file applications solely to sell them for a profit.

This approach is identical to that already employed to streamlined application processing in the broadcast context. At present, when there are mutually exclusive applicants for new broadcast licenses, the FCC limits settlement payments for withdrawing an application prior to the hearing to legitimate and prudent out-of-pocket expenses incurred by the withdrawing applicant in prosecuting its application.[39] The agency also limits payments made by applicants to third parties in exchange for the withdrawal of a petition to deny in new licensing, modification, transfer, and assignment proceedings to the legitimate and prudent expenses of the petitioner.[40] By limiting settlements to expenses, the FCC prevents the filing of frivolous or "sham" applications and petitions designed to profit from the agency's procedures,[41] and "greenmail" filings designed to force buy-out payments.[42] Each approach is an abuse of the FCC's

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38 Thus, Intelsat opposes the agency's plan to treat mergers or transfers of control as major amendments resulting in the loss of queue priority. *Id.*, ¶ 56.

39 47 C.F.R. § 73.3525(a)(3). The rule does not apply to *bona* fide merger agreements.

40 47 C.F.R. § 73.3588(a).

41 *Amendment of Section 73.3525 of the Commission's Rules Regarding Settlement Agreements Among Applicants for Construction Permits*, 6 FCC Rcd 85, 85 (1990) (Report and Order) ("*73.3525 Order*").

42 *Id.*, 6 FCC Rcd at 86. *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3912 (1990) (Report and Order) ("*73.3584 Order*"). *See also Amendment of Part 22 of the Commission's Rules To Provide For Filing and Processing of Applications for Unserved Areas in the Cellular Service and to Modify Other Cellular Rules*, 7 FCC Rcd 7183, 7185 (1992) (Third Report and Order and

procedures and applicant or licensee resources that the Commission already has declared to be outside the public interest. Preventing such abuses will aid in facilitating the public interest goal of offering new services to the public, because it expedites licensing by reducing non-bona fide applicants and spurious claims, thus reducing the complexity of the proceeding.[43] At the same time, however, this policy would not slow bona fide applications (including by new entrants) or the addressing of legitimate issues of applicant qualifications.[44]

In general, this more relaxed approach to transferability of space station licenses will serve the public interest by promoting prompt development and initiation of new satellite services. As stated in the *Notice,*[45] changes in market conditions or technology may make it most efficient for a licensee to sell a license to another party with a different business plan or more financial resources that will be better able to serve customers. Allowing applicants to transfer pending applications to new entities also will lower investment risk and enhance an applicant's ability to attract capital. As a result, new services will be funded and offered to the public more quickly.

G. The Commission Should Strenuously Enforce and Streamline Milestones

Under Intelsat's Modified FCFS procedure, Intelsat believes that the Commission should strenuously enforce milestones to prevent speculative applications and the warehousing of

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(Continued . . .)
Memorandum Opinion and Order on Reconsideration), *aff'd* 12 FCC Rcd 2109 (1996) (Further Memorandum Opinion and Order on Reconsideration) (the Commission's "proposed rule concerning payments for the withdrawal of pleadings will give the kind of reasonable encouragement which legitimate petitioners might need to raise issues affecting the public interest in particular proceedings with allowing 'greenmail' (i.e., excessive payoffs))."

43 *See 73.3525 Order*, 6 FCC Rcd at 85, 87.

44 *See id.*, 6 FCC Rcd at 85; *73.3584 Order*, 5 FCC Rcd at 3913.

45 *Notice*, ¶¶ 111-14.

spectrum. Historically, the Commission's milestone policy has supplemented its reliance on stringent license thresholds (such as financial qualifications) to ensure that spectrum is promptly put to use once licensed. Intelsat recognizes that the Commission largely has eliminated or minimized threshold applicant financial qualifications. Under such circumstances, strict milestone enforcement remains the best vehicle to ensure that licenses are not held by entities not capable or willing to put spectrum to use for consumers. Intelsat similarly supports the Commission's proposal to require license purchasers to comply with the milestones in the original license.[46]

Intelsat also supports the FCC's desire to streamline its enforcement of the construction commencement milestone. That milestone requires a licensee to enter into "a binding, non-contingent construction contract."[47] As the Commission notes, determining whether a contract is both binding and non-contingent "can require interpretation of construction contracts, and so can take time to administer."[48] Intelsat thus recommends that the Commission require licensees to certify under penalty of perjury that they have entered into a binding, non-contingent construction contract by the milestone date or provide a copy of the contract.[49] If the Commission requests submission of a contract for any reason, the rules should require a licensee to produce an unredacted copy of the contract, a redacted copy of the contract and a request for confidential treatment within 15 days.

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46 *Id.*, ¶ 116.

47 *Notice,* ¶ 105.

48 *Id.*, ¶ 105.

49 *See Tempo Enterprises, Inc.*, 1 FCC Rcd 20, 21 (1986) (Memorandum Opinion and Order) (noting that DBS licensees must submit either the relevant portions of their contracts to the Commission, or a sworn statement regarding the contents of the contract, verified by the satellite construction contractor).

To the extent that the Commission also adopts a Critical Design Review (CDR) requirement,[50] Intelsat urges the Commission to base each licensee's CDR time frame on the contract its negotiates with its satellite manufacturer. Under this approach, a licensee would notify the Commission of its contract deadline for CDR at the same time it certifies that it has entered into a non-contingent satellite construction contract. This approach would preserve a licensee's existing flexibility to negotiate for the construction of a satellite in a manner that best promotes that licensee's system development and provision of service to the public.

Finally, Intelsat opposes the FCC notion of prohibiting a licensee from applying for another satellite license in the same band or orbital location, whether permanently or for a limited number of years, if a milestone is missed.[51] That approach would deter entities from taking the risks required to provide satellite service to consumers and could unduly penalize entities that make legitimate business decisions to cease system progress. Moreover, under such circumstances, applicants that tried and failed already lose their license, application filing fee, system development costs and, in some instances, a bond and industry confidence. The public interest rarely would be served by permitting an entity that has already borne these costs an opportunity to try again but the FCC need not impose such a rule—the market itself will.

IV. THE COMMISSION SHOULD ADOPT A "DEEMED GRANTED" PROCEDURE FOR REPLACEMENT AND FOR MODIFICATION APPLICATIONS

Intelsat supports the Commission's proposal to deem replacement applications granted after a specified period of time[52] and urges the FCC to extend its proposed "deemed granted" procedure to satellite license modification applications. Specifically, Intelsat recommends that

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50 *Notice,* ¶ 105.

51 *Notice,* ¶ 106.

52 *Id.,* ¶ 120.

the Commission automatically, and without written order, grant both replacement and modification applications on the 30th day (effective the 31st day) following Public Notice, unless the FCC notifies the applicant that additional time is required to evaluate the application. Petitions to deny would not automatically remove an application from the "deemed granted" process but would provide the FCC a basis on which to notify the applicant that the agency requires additional processing time. Under this procedure, the FCC could issue periodic public notices identifying those replacements and modifications "deemed granted." Alternatively, the FCC could "grant stamp" replacement and modification applications within 45 days following the Public Notice.

To be eligible for streamlined processing under either the "deemed granted" or "grant stamp" procedure, an applicant should submit with its replacement or modification application a certification that the satellite will satisfy the Commission's technical requirements and is capable of operating within existing coordination parameters at the current or modified orbital location. In this respect, the FCC's recommendation that replacement satellites employ "technical characteristics consistent with those of the satellite to be retired"[53] is too narrow. To be eligible for streamlined treatment (grant stamp or deemed granted), the technical characteristics of any replacement satellite need not be precisely the same because that requirement would stifle serving customers with the most up-to-date technology.[54] In order to encourage technical innovation, the Commission should treat any replacement satellite as 'technically consistent' if it:

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53 *Notice*, ¶ 120.

54 The FCC itself has acknowledged this fact. *Id.*, ¶ 120 n.160.

- Only uses expanded frequencies within a band that is already authorized (*i.e.*, adding extended Ku-band frequencies to a satellite that already has Ku-band authority),
- Limits any changes to the coverage area to those that can be made within the Commission's rules, and any relevant coordination agreements, and
- Utilizes power levels, emissions characteristics and signal modulation techniques that, even if not identical with the satellite being replaced, could operate within the limits included in the Commission's technical regulations and any ongoing coordination agreements with other spectrum users.

Such a flexible approach would enable satellite operators to continue to provide services to their customers that is technically competitive with the offerings of terrestrial-based communications services. Adoption of this additional streamlining measure would serve the public interest by reducing the strain on FCC resources of preparing a written order. It would also provide greater licensing certainty to satellite operators that seek to enhance their service. As a result, the public will benefit from market-driven improvements in satellite services without waiting for additional regulatory review.

V. THE COMMISSION SHOULD ELIMINATE UNNECESSARY TECHNICAL INFORMATION REQUIREMENTS

Intelsat supports the FCC's desire to streamline the technical information submitted with applications for new satellite services.[55] The Commission's proposal to require applicants to file additional and more detailed technical information, however, is contrary to its objectives of streamlining satellite licensing and expediting service to consumers. To meet these objectives, Intelsat recommends that the FCC eliminate redundant or outdated rules and rely more broadly on the submission of ITU-required technical data and certifications. As shown below, the Commission's receipt of ITU data and certifications will permit it to "to protect against harmful

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55 *Notice*, ¶ 84.

interference to adjacent satellite systems"[56] and will facilitate the prompt delivery of service to consumers.

Intelsat recommends that the FCC eliminate rules that are redundant with ITU filing requirements. Currently, there is substantial overlap between Section 25.114(c) of the FCC's rules and the ITU information requirements set forth in Appendix S-4 of the Radio Regulations for advance publication and coordination of geostationary satellite networks. Thus, to streamline the burden on satellite operators to compile, and the FCC to review, technical information, Intelsat proposes that the Commission require satellite operators to submit ITU information in lieu of the redundant provisions of Section 25.114 of its rules.

Intelsat also suggests that the Commission could rely in many cases on certifications of compliance rather than review of detailed technical information. For example, there is no reason for the FCC to require an applicant to both "certify" its compliance with pfd limits and provide the underlying technical information to support that certification.[57] The satellite operators' certifications of compliance fully serves the public interest in obtaining radio services free from harmful interference.

In addition, Intelsat urges the Commission to eliminate the outdated requirement in Section 25.210(a) of the rules that requires C-band satellite operators to employ orthogonal linear and switchable polarization on a transponder basis. This rule was adopted two decades ago to facilitate sharing between satellites operating two degrees apart offering analog television. However, most television transmissions have now upgraded to digital technology. Given the decline of analog television, and the relative ease of coordinating digital signals, mandating

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56 *Id.*, ¶ 24.

57 *Notice*, ¶ 91.

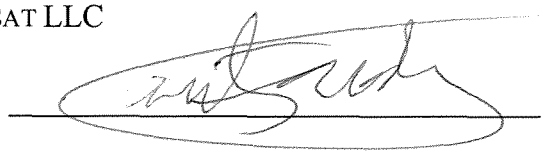
satellite operators to employ orthogonal linear and switchable polarization has outlived its usefulness; there simply is no need to preclude any particular sharing solutions. Thus, Intelsat recommends that the Commission replace Section 25.210(a) of its rules, with a requirement that satellite operators coordinate with adjacent operators.

VI. CONCLUSION

In view of the foregoing, Intelsat encourages the FCC to adopt its proposed Modified FCFS licensing approach, establish a "deemed granted" procedure for modification and replacement applications and streamline the filing of technical information. These principles will expedite service to the public, reduce administrative costs to the Commission and licensees, and promote the public interest.

Respectfully submitted,

INTELSAT LLC

By: 

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